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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,314	08/01/2006	Siew Kim Lee	DAIRY88.015APC	6941
20995 7590 12/11/2009 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614				
EXAMINER				
KRAUSE, ANDREW E				
ART UNIT		PAPER NUMBER		
1794				
NOTIFICATION DATE		DELIVERY MODE		
12/11/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com  
eOAPilot@kmob.com

### Office Action Summary

**Application No.**

10/563,314

**Applicant(s)**

LEE ET AL.

**Examiner**

ANDREW KRAUSE

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 21 September 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-19 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Listing of Claims*

1. Claims 1-19, 21 are pending. Claims 1, 11-15, and 19 are amended.

### *Claim Rejections - 35 USC § 103*

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1-19, 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wahlgren (US 6,365,205).
4. "Approximate pH of Foods and Food Products, hereafter 'pH'" and "US Dairy Export Council-Nutritional Information, hereafter USDEC" are cited as evidence.
5. Regarding claims 1-3, 8-10,11-15,19,21 Wahlgren discloses a method of producing water continuous dairy products such as quark, fresh cheeses, crème fraîche and the like (col. 1, lines 5-10). Wahlgren discloses providing a mixture of dairy starting material comprising dairy cream and optionally some skim milk or skim milk powder to achieve a non-fat milk solids content of 7-12% (col. 2, lines 13-46). One having ordinary skill in the art would expect such a mixture to contain casein and undenatured whey protein. The dairy starting material may be pasteurized (col. 2, lines 41-42), and no pH adjustment is required to bring the pH of the starting material within the range of 5.0-8.0. As evidenced by 'pH', one would expect a cream-based starting material to

have a pH of about 6.5 (page 2, cream 20%/40%). This pasteurized (cooked) cream may then be acidified with lactic acid or glucono delta lactone, to achieve a pH of 4.2-5.2 in order to allow coagulation of caseins (abstract, col. 2, lines 58-67). This pH 4.2-5.2 product may then be processed by adding a fresh coagulated curd to the acidified cream, homogenizing, and packaging (col. 3, line 18-col. 4, lines 26), thereby forming a final product. Although Wahlgren does not explicitly disclose that the process proceeds without removing whey, Wahlgren fails to disclose steps that would motivate one having ordinary skill in the art to remove or drain whey from the product. Therefore one having ordinary skill in the art would find it obvious to carry out the process without removing whey.

6. Further regarding claim 19, the product is preferably packed when hot, when the product would be expected to be in liquid form, and allowed to cool down, thereby forming a spreadable food (col. 4, lines 14-26). One having ordinary skill in the art at the time of the invention would expect these conditions to allow the packaged product to set.

7. Regarding claim 4, the starting material possesses a non-fat milk solids content of 7-12%. This is the fraction that would include whey and casein. 'USDEC' discloses that the ratio of whey to casein in the non-fat milk solids would be expected to be about .25 ('Proteins').

8. Regarding claims 5-7, the starting material contains about 7-12% non-fat milk solids (above). As evidenced by 'USDEC' one would expect these solids to contain about 36% protein, 80% of which is casein, ('Comparative Typical Composition of Dry Milks', 'Protein'). The quantity of casein present in the starting material would then be expected to be about 2% to about 3.5%. The quantity of casein may be further adjusted as casein may be added as caseinate (Example 4), in order to reduce syneresis in the final product.
9. Regarding claims 16-18, the product may be pasteurized (cooked) at, for example, 70 C (col. 2, lines 41-42). It would have been obvious to one having ordinary skill in the art at the time of the invention to adjust the time required for pasteurization as a matter of routine skill in the art.

#### ***Response to Arguments***

10. Applicant's arguments with respect to claims 1-19, 21 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW KRAUSE whose telephone number is (571)270-7094. The examiner can normally be reached on 7:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571)272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ANDREW KRAUSE/  
Examiner, Art Unit 1794

/Keith D. Hendricks/  
Supervisory Patent Examiner, Art Unit 1794